

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
FOURTH REGION**

STERICYCLE, INC.

Employer/Petitioner

and

INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, LOCAL 115

Cases 4-RM-1267 and  
4-UC-421

Union Involved

and

INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, LOCAL 628<sup>1</sup>

Union Involved

**REGIONAL DIRECTOR'S DECISION AND  
DIRECTION OF ELECTION, AND  
ORDER CLARIFYING BARGAINING UNIT**

The Employer/Petitioner, Stericycle, Inc., is engaged in transporting and processing medical waste at more than 150 sites in North America and the United Kingdom.<sup>2</sup> As of January 1, 2006, the Employer had facilities in Montgomeryville, Morrisville, and Warminster, Pennsylvania. Drivers and warehouse employees at the Montgomeryville and Morrisville facilities were represented by Teamsters Local 628,<sup>3</sup> while drivers and warehouse employees at the Warminster site were represented by Teamsters Local 115. The bargaining unit represented by Teamsters Local 115 also included a group of seven or eight employees that work in Maryland, Washington, D.C., and northern Virginia (the Mid-Atlantic employees).

In January 2006, the Employer, in an effort to improve the efficiency of its operations, consolidated the facilities in Montgomeryville, Morrisville, and Warminster into a single facility

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<sup>1</sup> The names of both Unions Involved appear as amended at the hearing.

<sup>2</sup> For convenience, this decision will refer to the Employer/Petitioner as the Employer. The Unions Involved shall be called Local 628 and Local 115.

<sup>3</sup> Local 628 represented the drivers and warehouse employees as separate units, although they were covered by a single contract.

located in Southampton, Pennsylvania and transferred the employees from all three facilities there. The Employer contends that the consolidation resulted in the merger of the bargaining units represented by Local 115 and Local 628 at the three sites into a single bargaining unit. In Case 4-RM-1267, the Employer seeks an election to determine whether the employees in this assertedly merged unit wish to be represented by Local 115 or Local 628.

The Employer also contends that its consolidation of facilities coupled with other organizational changes renders inclusion of the Mid-Atlantic employees in the same bargaining unit with Southampton employees inappropriate. In Case 4-UC-421, the Employer seeks to clarify the unit to divide the existing unit into separate units of Pennsylvania and Mid-Atlantic employees.

Local 115 contends that the consolidation of operations in Southampton has not resulted in a merger of bargaining units and that separate Local 115 and Local 628 units remain appropriate. Local 115 further asserts that any attempt to sever the Mid-Atlantic employees from the existing unit is untimely and barred by its current contract with the Employer.

Local 628 maintains that the Local 115-represented employees who transferred from Warminster to Southampton constitute an accretion to its existing bargaining units and that it should be declared the representative for units of all warehouse employees and drivers at the Southampton facility. Local 628 agrees with the Employer that the Mid-Atlantic employees should be excluded from the unit.

A Hearing Officer of the Board held a hearing, and the parties filed briefs. I have considered the evidence and the arguments presented by the parties. As explained below, I find that the historic units represented by Local 115 and Local 628 have been merged into a single consolidated unit at the Southampton facility. Since neither group predominates in this merged unit, I shall direct an election to determine whether employees desire to be represented by Local 115 or by Local 628 or by neither union. I also conclude that the consolidation and other operational changes have made it inappropriate to include the Mid-Atlantic employees in the same bargaining unit with the Southampton employees, and I shall clarify the unit to create a separate unit of Mid-Atlantic employees, which shall remain represented by Local 115. Since the consolidation took place relatively soon after negotiation of the most recent contract between the Employer and Local 115, I find that the contract does not bar the clarification sought by the Employer and that the Employer's unit clarification petition was timely filed.

This Decision will first present an overview of the Employer's operations. The Decision will then describe the facts and law relevant to resolution of the merged unit question and set forth the reasons for concluding that an election in a single unit of Southampton employees is appropriate. This will be followed by a presentation of the facts relevant to the question of whether it remains appropriate to include Mid-Atlantic employees in this unit and an analysis of the decision to split off those employees into a separate unit.

## **I. OVERVIEW OF OPERATIONS**

The Employer dispatches trucks from its Southampton facility to collect medical waste from hospitals, clinics, nursing homes, and other medical facilities. The waste is transported back to the Southampton facility and then transferred to other trucks and brought to the Employer's treatment and disposal facilities elsewhere. The Employer also provides supplies for its customers to package and label their waste items.

The Employer's North American operation is divided into 17 Districts and about 40 Service Areas. The Southampton facility is part of a Service Area which reports to Vice-President Charlie Alutto, who is responsible for territory situated between Maine and Pennsylvania and the Atlantic Ocean and Detroit, Michigan. The Mid-Atlantic employees represented by Local 115 are in a different administrative segment of the Employer's operation, which reports to Vice-President Kurt Robertson.

William Reiss is the Operations Manager for the Southampton facility. Until the consolidation of facilities in January 2006, Reiss was the Operations Manager for the three facilities operated by the Employer in Montgomeryville, Morrisville, and Warminster. Reiss is not responsible for the Mid-Atlantic employees represented by Local 115; those employees report to Frank Kersey who is based in Baltimore, Maryland.

At the time of the hearing, the Employer's Southampton workforce included nine supervisors, 74 drivers and warehouse employees, two mechanics, and seven office employees. Of the 74 drivers and warehouse employees, 35 were working under the contract between the Employer and Local 628, and 39 were working under the contract between the Employer and Local 115.

## **II. THE MERGED UNIT QUESTION**

### **A. Relevant Principles**

Where an employer merges two groups of employees who have historically been represented by different unions, the Board finds that the merger raises a question concerning representation unless one of the groups constitutes such a large proportion of the merged workforce that there is no reason to question the continued majority status of that group's bargaining representative. *Metropolitan Teletronics Corp.*, 279 NLRB 957, 960 (1986), enfd. 819 F.2d 1130 (2d Cir. 1987); *Martin Marietta Co.*, 270 NLRB 821, 822 (1984); *Massachusetts Electric Co.*, 248 NLRB 155, 157 (1980); *The Denver Publishing Co.*, 238 NLRB 207 (1978); *Boston Gas Co.*, 221 NLRB 628, 629 (1978). A collective-bargaining agreement covering one or the other of the groups will not bar an election in the event of a merger. *Martin Marietta Co.*, above; *Boston Gas Co.*, above. Traditional community-of-interest criteria are considered in determining whether a merger of units has taken place. See *Serramonte Oldsmobile, Inc.*, 318 NLRB 80, 104 (1995), enfd. in pertinent part, 86 F. 3<sup>rd</sup> 227 (D.C. Cir. 1996); *Kelly Business Furniture, Inc.*, 288 NLRB 474, 478 (1988); *Martin Marietta Co.*, above. A merger will not be

found if the original employee groupings remain separate appropriate units. *Serramonte Oldsmobile*, above.

In evaluating community of interest, the Board examines such factors as: (1) functional integration; (2) frequency of contact with other employees; (3) interchange with other employees; (4) degree of skill and common functions; (5) commonality of wages, hours, and other working conditions; and (6) common supervision. *Publix Super Markets, Inc.*, 343 NLRB No. 109 (2004); *Home Depot USA, Inc.*, 331 NLRB 1289 (2000).

## **B. Facts**

### *The Consolidation of the Facilities*

The Employer purchased the Montgomeryville facility from Browning Ferris Industries in November 1999, and Local 628 was certified in the summer of 2000 as the representative for separate units of Drivers and Loaders at that facility. Loaders are warehouse employees. The separate units of Drivers and Loaders have been covered by a single contract. The most recent such contract was negotiated in 2003 and is scheduled to expire in October 2006. Immediately prior to the January 2006 consolidation, the Montgomeryville facility was staffed by two supervisors, 19 Drivers, three Loaders, five office employees, and one mechanic.

The Employer purchased the Morrisville facility from SMI in April 2005. Local 628's Montgomeryville contract contains a provision which arguably requires the Employer to assign any newly-acquired work within the geographic area serviced by Montgomeryville to Local 628-represented employees,<sup>4</sup> and Local 628 argued that this provision required assignment of the work being done by Morrisville employees to the Local 628 bargaining unit. As a compromise, the Employer agreed to cover Morrisville employees under the Local 628 agreement effective November 2005. As of January 1, 2006, the Employer employed two supervisors, eight Drivers, six Loaders, two office employees, and one mechanic at Morrisville.

The Warminster facility was originally operated by Bio Systems, and Local 115 became the representative for Bio Systems' Warminster employees in 1991 or 1992. The Employer

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<sup>4</sup> Specifically, the contract states as part of the Recognition clause:

Subject to the terms of Article 27.1 [the Subcontracting clause], during the term of this agreement, in the event that the Employer relocates its Montgomeryville operations covered by this agreement to any location in the Pennsylvania Counties of Berks, Bucks, Chester, Delaware, Lehigh, Montgomery, and Philadelphia or in the Southern New Jersey Counties, of Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Hunterdon, Mercer, Ocean and Salem, the Employer shall continue to recognize the Union as the collective bargaining agent for all full-time and regular part-time drivers and all full-time and part-time loaders at the new location or merged location and agrees that this agreement shall apply at that location.

acquired Bio Systems and its Warminster facility in March 2003, and Local 115 continued to represent the Warminster employees there. The Local 115 bargaining unit in Warminster included employees classified as Driver Techs, Warehousemen, In-House Techs, Helpers, and Long Haul Drivers. The most recent contract covering the unit was executed by the parties on October 12, 2005 and is scheduled to expire in 2007. The Warminster workforce at the time of consolidation consisted of five supervisors, 23 Driver Techs, six Warehousemen, four In-House Techs, two Helpers, one Long Haul Driver, and four office employees.

Thereafter, the Employer decided to consolidate its various facilities at a single location. In August or September 2005, the Employer informed Local 115 and Local 628 that it expected to combine the three facilities in Southampton in January 2006. Local 628 initially suggested that its bargaining units be transferred to the new facility first and that the Local 115-represented employees be treated as an accretion to these units. It also proposed, and the Employer agreed, that members of the Local 628 unit be used to move equipment from Montgomeryville and Morrisville to Southampton.

Montgomeryville employees were moved to Southampton on January 7, 2006, Morrisville employees were transferred on January 21, 2006, and Warminster employees were moved on January 28, 2006. No unit employees were laid off as a consequence of the consolidation; all bargaining unit employees were transferred to Southampton. The Local 628-represented Loaders and the Local 115-represented Warehousemen were reclassified as Dockworkers following the move, and the remaining unit employees retained their classifications. As of February 1, 2006, 49 Drivers and Driver Techs, 16 Dockworkers, five In-House Techs, two Helpers, and one Long Haul Driver worked in Southampton. 34 of these employees had transferred from Warminster, 35 had transferred from either Montgomeryville or Morrisville, and three were hired following the consolidation.

The mechanics who had worked in Montgomeryville and Morrisville were both transferred to Southampton.<sup>5</sup> About half of the pre-consolidation office staff was eliminated as a result of the consolidation, and the other half transferred to Southampton. All of the supervisors employed in Montgomeryville, Morrisville, and Warminster were also transferred, and they retained their job titles following the move, with the exception of one Morrisville supervisor who was reclassified as a dispatcher. The record does not indicate whether the supervisors from the three facilities now supervise only employees who came from the same facilities or whether they supervise all employees, regardless of the facility from which they transferred.

Prior to the consolidation, each facility generally handled separate customers, although in some instances a single customer received different services from employees of more than one facility. Since the move to Southampton, the Employer has started to reassign customers from employees who came from one facility to employees who came from a different facility.

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<sup>5</sup> The mechanics were not part of the Local 628 bargaining unit.

### *Employee Job Functions and Terms and Conditions of Employment*

Employees in Southampton perform similar functions regardless of whether they came from a Local 628 or a Local 115-represented facility. Local 628 Drivers and Local 115 Driver Techs visit hospitals, medical offices, and other facilities to pick up medical waste. Both groups pick up the same types of waste from the same sorts of facilities. The Employer provides different types of pick-up service, and there is some variation in the procedures used by employees in the two units for pick-ups. Local 115-represented employees service customers who have contracted to have waste picked up in recyclable containers at numerous locations throughout their facilities. Local 628-represented Drivers service customers who box their waste in non-recyclable containers and store it at a single location for pick-up. Currently, some hospitals are serviced by employees of both units because they use both types of containers. The Employer anticipates training drivers in each group to provide the type of service now provided by the other group.

The small number of employees classified as Helpers are included in the Local 115 unit. They accompany drivers and assist in waste pick-up. In-House Techs from the Local 628 unit are assigned to particularly large facilities which have opted for pick-up at numerous locations. They go through such facilities gathering waste during the course of a day and consolidating the waste at a single location from which it is picked up by a Driver Tech. The Long Haul Driver in the Local 115 unit takes waste from Southampton to a facility in New York State.

Dockworkers, regardless of whether they are represented by Local 115 or Local 628, unload waste from and load equipment onto the vehicles operated by Drivers and Driver Techs. The Southampton facility has an open warehouse area with nine loading docks. Three of the loading docks are normally used by Local 115-represented employees, while the other docks are used by employees represented by Local 628. The Local 115-represented Dockworkers typically service vehicles operated by Local 115 Driver Techs, and the Local 628-represented Dockworkers usually work with the Local 628 Drivers. Dockworkers in one Local occasionally assist Dockworkers in the other Local, and the Employer is currently training Dockworkers so they can service drivers without regard to bargaining unit.

The record does not clearly indicate the extent of contact between employees of the two units. One employee, a Driver Tech from the Local 115 unit, testified that he has casual friendly contact with Loaders represented by Local 628 when he sees them.

Employees work different schedules depending on which Local represents them. The Local 115-represented Dockworkers work shifts which begin at midnight, 7 a.m., and 9:30 a.m. The Local 628 Dockworkers start at either 10 a.m. or noon. Local 115's Driver Techs report between midnight and 6 a.m., while Local 628 Drivers begin work between 3 a.m. and 6 a.m.

The Employer has continued to apply its existing collective-bargaining agreements to both units at the Southampton location, which means that employees receive different benefits depending on whether they are represented by one Local or the other. Employees represented by both Locals receive comparable rates of pay. Local 628-represented employees are paid between

\$12.50 per hour and \$19.60 per hour, while employees in the Local 115 unit are paid between \$10 per hour and \$19.67 per hour.

All employees share the same breakroom and locker room and use the same timeclock. The same standards of performance are applied regardless of which Local represents employees, and employees in both units receive annual reviews on the same form. All employees attend safety training together. An employee could transfer from one unit to the other unit, although this has never happened. Local 628 Drivers wear uniforms different than the uniforms worn by Local 115 Driver Techs—the Local 115 uniforms continue to include the name “Bio Systems.”

### **C. Analysis**

The evidence in this case supports a finding that the formerly separate Local 115 and Local 628 units have been merged into a single unit consisting of all Drivers, Driver Techs, In-House Techs, Dockworkers, Helpers, and Long Haul Drivers employed at the Southampton facility.

The employees from both units now work together at the same site, and all employees share common facilities. The Dockworkers and Driver Techs currently represented by Local 115 use loading docks adjacent to the loading docks utilized by Local 628-represented Drivers and Dockworkers.

Employees in both units perform the same functions applying the same skills. Regardless of the unit to which they are assigned, Drivers and Driver Techs pick up medical waste, and Dockworkers load equipment and unload medical waste. While there are some minor differences in the procedures used by employees in the two units in doing their jobs, the basic functions are very similar. Further, the Employer is in the process of cross-training Dockworkers and anticipates cross-training Drivers and Driver Techs.

Some common supervision exists since employees in both units report to Southampton Operations Manager William Reiss, although the record does not indicate which employees are supervised by the lower-level supervisors. There is some contact between the employees of the two groups, and there is limited functional integration inasmuch as Dockworkers in one unit occasionally assist Dockworkers in the other unit. The Employer has also begun to consolidate customers on driver routes and anticipates further consolidation in the future. The pay rates of employees in the two units are comparable.

Admittedly, some factors suggest the continued existence of distinct appropriate units of Local 628 and Local 115-represented employees. Thus, there is a history of separate bargaining in two units. The Local 115 Driver Techs and Local 628 Drivers use somewhat different procedures in making pick-ups. The two groups of drivers have different uniforms, and there are variations in the schedules worked by Local 115 and Local 628-represented workers. But I find that these distinctions are outweighed by the factors supporting a finding of merger, and I conclude that the Local 115 and Local 628-represented employees have been merged into a single unit. *Kelly Business Furniture, Inc.*, above; *The Denver Publishing Co.*, above; *Boston Gas Company*, 235 NLRB 1354, 1355 (1978).

I further find that this merged unit should include both Drivers and Dockworkers. While Local 628 represented separate units of Drivers and Loaders, the two groups of employees were covered by a single contract and shared common working conditions. Further, the Local 115 bargaining unit historically included Dockworkers with Driver Techs, and there is significant functional integration between the two groups since the Dockworkers load and unload Driver and Driver Tech vehicles. There is also some contact between the two groups. I therefore find that the appropriate bargaining unit in this case should combine the Dockworkers with the Drivers, Driver Techs, In-House Techs, Helpers, and Long Haul Drivers. See *Don Kerr, Inc.*, 129 NLRB 526 (1960).

Local 628 contends that the Local 115-represented employees should be treated as an accretion to the group of employees which it represents. However, the Board does not apply its usual accretion doctrine in cases where two groups of separately represented employees are merged. Rather, a question concerning representation will be found in merger cases unless one group predominates, a circumstance not present here. See, e.g., *Martin Marietta Corp.*, above. I also find, contrary to Local 115's assertion, that there can be no contract bar to an election in a situation where two existing units are combined. See, e.g., *Boston Gas Company*, 221 NLRB 628 (1975). In sum, an election should be ordered in a combined unit of Southampton employees.

### **III. THE MID-ATLANTIC EMPLOYEES**

#### **A. Facts**

Since 1991 or 1992, the Local 115 bargaining unit has included a group of employees working in Maryland, Washington, D.C., and northern Virginia. Local 115's contract refers to these employees as the Mid-Atlantic employees. When Bio Systems operated the Warminster facility, these employees were supervised by the Warminster plant manager. The Employer reorganized operations following its acquisition of Bio Systems, and the Mid-Atlantic employees are now supervised by a manager based in Baltimore. As noted above, they are in a Service Area different from that which includes the Southampton facility and report to a Vice President different from the Vice President in charge of Southampton.

Seven or eight employees currently work in the Mid-Atlantic area. Like the employees in Southampton, the Mid-Atlantic employees collect medical waste. Once a day, a truck driven by one of the Mid-Atlantic employees brings medical waste to Southampton where it is consolidated with waste collected by Southampton employees before being sent to disposal sites. A second Mid-Atlantic driver brings additional waste to Southampton once a week. Other than those two drivers, Mid-Atlantic employees never come to the Southampton facility. The waste carried by the Mid-Atlantic trucks is unloaded by Southampton Dockworkers who also load supplies for the return trip.

There is no contact between the Southampton and Mid-Atlantic employees except for the two Drivers who bring waste to Southampton. The areas serviced by the two groups do not



overlap. Employees are not transferred temporarily between Southampton and the Mid-Atlantic area, and there have been no permanent transfers of employees from one area to the other. Under Bio Systems, the Mid-Atlantic employees occasionally journeyed to Pennsylvania for training, but they are now trained separately from the employees in Southampton.

The Employer and Local 115 negotiated a contract covering Warminster and Mid-Atlantic employees in the late summer and early fall of 2005. At the start of the negotiations, the Employer argued that a single unit of Mid-Atlantic and Warminster employees had been rendered inappropriate by organizational changes and proposed that the Mid-Atlantic employees be removed from the unit. Local 115 refused, and the Employer ultimately assented to an agreement covering both groups in order to secure a contract. However, the Employer informed Local 115 at the conclusion of negotiations that it intended to file a unit clarification petition with the Board to sever the Mid-Atlantic employees from the Warminster unit. The Employer and Local 115 signed their new agreement on October 12, 2005, and the Employer's unit clarification petition in this case was filed on April 7, 2006.

## **B. Analysis**

Unit clarification is appropriate where an existing historical bargaining unit has been rendered inappropriate by a restructuring of an employer's operation. *Armco Steel Co.*, 312 NLRB 257, 258-259 (1993); *Lennox Industries, Inc.*, 308 NLRB 1237, 1238 (1992); *Rock-Tenn Co.*, 274 NLRB 772 (1985). The Employer's reorganization following its acquisition of Bio Systems eliminated the primary link between the Mid-Atlantic employees and the Pennsylvania operation – the common supervision of employees in both areas by the Warminster plant manager. The employees in the Mid-Atlantic area are now separately supervised and continue to work in a separate location. Only two Mid-Atlantic employees have any contact with employees in Pennsylvania, one of whom only comes to Pennsylvania once a week. Functional integration is limited to the transfer of waste from the Mid-Atlantic area to Pennsylvania for transshipment to disposal sites and the use of the Southampton facility as the location at which Mid-Atlantic employees pick up supplies.

The consolidation effectively eliminated bargaining history as a significant consideration in determining whether a combined unit remains appropriate. Thus, the historic Local 115 unit no longer exists; it has been merged with the Local 628 unit into a new unit, and there is no history of including Mid-Atlantic employee in this new unit. I therefore find that the reorganization which followed the Employer's acquisition of Bio Systems, coupled with the more recent consolidation of facilities in Southampton, has rendered the historic inclusion of Mid-Atlantic employees in a Pennsylvania bargaining unit inappropriate. See *Lennox Industries, Inc.*, above; *Frito-Lay, Inc.*, 177 NLRB 820 (1969).

Local 115 contends that the Employer's attempt to clarify Mid-Atlantic employees out of the Southampton unit is untimely, citing cases which preclude the filing of a unit clarification petition during the term of a collective-bargaining agreement which clearly defines the unit. See, e.g., *Edison Sault Electric Co.*, 313 NLRB 753 (1994). However, clarification is appropriate where there have been recent, substantial changes in an employer's operation. *Rock-Tenn Co.*, above. Cf. *Batesville Casket Co.*, 283 NLRB 795, 797 (1987). The consolidation of operations

in Southampton was a substantial change in the Employer's operation impacting the continued viability of a combined Mid-Atlantic/Pennsylvania unit, and it postdated negotiation of the most recent Local 115 agreement.

Unit clarification is also appropriate where parties are unable to resolve an issue in bargaining and do not wish to press the matter at the expense of reaching agreement. The Board will process a unit clarification petition in this circumstance provided it is filed shortly after the execution of the agreement and the party filing the petition did not abandon its position in exchange for bargaining concessions. *St. Francis Hospital*, 282 NLRB 950, 951 (1987). In its most recent round of negotiations with Local 115, the Employer sought to have the Mid-Atlantic employees removed from the unit. It abandoned this position in order to avoid a stalemate in negotiations, but there is no evidence that it secured concessions from Local 115 in return and the Employer announced at the bargaining table that it would file a unit clarification petition to resolve the matter. The petition in this case was filed less than six months following execution of the contract, and I find this meets the Board's test for filing "shortly after" the conclusion of negotiations. See *Sunoco (R&M)*, 347 NLRB No. 38 (2006). Cf. *St. Francis Hospital*, above; *Baltimore Sun Co.*, 296 NLRB 1023, 1024 (1989). In this connection, during the interim between the October 12, 2005 execution of the contract and the April 7, 2006 filing of the petition, the Warminster facility was consolidated into the Southampton operation, causing uncertainty as to the scope of the unit. In these circumstances, the additional few months the Employer took to file the petition was not an unreasonably long time, and the Employer's petition was not untimely filed.

In sum, I conclude that the Mid-Atlantic employees are no longer appropriately included in the same bargaining unit with employees currently working in Southampton and that they constitute a separate appropriate unit. Employees in this unit have traditionally been represented by Local 115, and unlike the situation in Southampton there is no reason to doubt Local 115's continued status as their representative. I shall therefore clarify the Southampton unit to exclude the Mid-Atlantic employees and to create a separate unit of Driver Techs, In-House Techs, Helpers, Warehouse employees, and Long Haul Drivers in the Mid-Atlantic area that will continue to be represented by Teamsters Local 115.

#### **IV. CONCLUSIONS AND FINDINGS**

Based upon the entire record in this matter and for the reasons set forth above, I conclude and find as follows:

1. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. The Unions Involved claim to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full time and regular part-time Drivers, Driver Techs, In-House Techs, Helpers, Dockworkers, and Long Haul Drivers employed by the Employer at its Southampton, Pennsylvania facility; **excluding** all other employees, Mid-Atlantic area employees, office clerical employees, guards and supervisors as defined in the Act.

## **V. DIRECTION OF ELECTION IN CASE 4-RM-1267**

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for the purposes of collective bargaining by **International Brotherhood of Teamsters Local 115, by International Brotherhood of Teamsters Local 628, or by Neither**. The date, time, and place of the election will be specified in the Notice of Election that the Board's Regional Office will issue subsequent to this Decision.

### **A. Eligible Voters**

The eligible voters shall be unit employees employed during the designated payroll period for eligibility, including employees who did not work during that period because they were ill, on vacation, or were temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, employees engaged in an economic strike, which commenced less than 12 months before the election date, who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Employees who are otherwise eligible but who are in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are: 1) employees who have quit or been discharged for cause after the designated payroll period for eligibility; 2) employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date; and 3) employees engaged in an economic strike which began more than 12 months before the election date who have been permanently replaced.

### **B. Employer to Submit List of Eligible Voters**

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior*

*Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the *full* names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, One Independence Mall, 615 Chestnut Street, Seventh Floor, Philadelphia, Pennsylvania 19106 on or before **July 31, 2006**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (215) 597-7658, or by e-mail to [Region4@NLRB.gov](mailto:Region4@NLRB.gov).<sup>6</sup> Since the list will be made available to all parties to the election, please furnish a total of two (2) copies, unless the list is submitted by facsimile or e-mail, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

### **C. Notice of Posting Obligations**

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of three (3) working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least five (5) working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so stops employers from filing objections based on non-posting of the election notice.

## **VI. ORDER CLARIFYING UNIT IN CASE 4-UC-421**

**IT IS HEREBY ORDERED** that the bargaining unit referred to above is clarified to exclude Driver Techs, In-House Techs, Warehouse Employees, Helpers, and Long Haul Drivers employed by the Employer in the Mid-Atlantic area. The Mid-Atlantic employees in those classifications shall be a separate bargaining unit and shall remain represented by **International Brotherhood of Teamsters, Local 115**.

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<sup>6</sup> See OM 05-30, dated January 12, 2005, for a detailed explanation of requirements which must be met when submitting documents to a Region's electronic mailbox. OM 05-30 is available on the Agency's website at [www.nlr.gov](http://www.nlr.gov).

## **VII. RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, NW, Washington, D.C. 20570-0001. A request for review may also be submitted by e-mail. For details on how to file a request for review by e-mail, see <http://gpea.NLRB.gov/>. This request must be received by the Board in Washington by 5:00 p.m., EDT on **August 7, 2006**.

Signed: July 24, 2006

at Philadelphia, Pennsylvania

/s/ [Dorothy L. Moore-Duncan]  
DOROTHY L. MOORE-DUNCAN  
Regional Director, Region Four  
National Labor Relations Board